

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT G. GARDNER,)	CASE NO. C07-0643-RSL
)	
Petitioner,)	
)	
v.)	REPORT AND RECOMMENDATION
)	
ROBERT J. PALMQUIST, Warden,)	
Federal Detention Center, et al.,)	
)	
Respondents.)	
_____)	

Petitioner is a federal prisoner who is currently incarcerated at the Federal Detention Center at SeaTac, Washington. He is serving an eighteen month sentence pursuant to a judgment of the United States District Court for the Northern District of California. (*See* Dkt. No. 15, Ex. 3.) Petitioner has filed a federal habeas petition pursuant to 28 U.S.C. § 2241 in which he challenges the validity of the regulation issued by the Federal Bureau of Prisons (“BOP”) which categorically limits the class of prisoners eligible for release to community confinement based on the amount of time the prisoner has left to serve. (Dkt. No. 3.)

In *Pankratz v. Palmquist*, Case No. C06-1328-RSL, the District Court found that the regulation challenged in these proceedings, 28 C.F.R. § 570.21 (“the regulation”), which limits the

01 amount of time an inmate may spend in community confinement to 10% of the inmate's sentence,
02 was invalid because it exceeded the authority granted to the BOP under 18 U.S.C. § 3621(b).

03 Respondents have filed a response to the petition in which they set forth essentially the
04 same legal arguments advanced in *Pankratz*. (See Dkt. No. 15.) Specifically, respondents argue
05 that petitioner has not yet exhausted his administrative remedies and that he should be required
06 to do so before his case is considered by the Court. Respondents further argue that the challenged
07 regulation is valid and should be upheld. In *Pankratz*, the Court rejected both respondents'
08 procedural argument and respondents' substantive argument. This Court sees no basis on which
09 to distinguish the present case from *Pankratz* as to either issue.¹

10 Accordingly, this Court recommends granting the same relief afforded in *Pankratz*: that
11 BOP be directed to review petitioner's case under the factors outlined in 18 U.S.C. § 3621(b),
12 without regard to the time limits set forth in the regulation. A proposed order accompanies this
13 Report and Recommendation.

14 DATED this 16th day of July, 2007.

15 
16 Mary Alice Theiler
17 United States Magistrate Judge
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22 ¹ The Court acknowledges that petitioner Gardner has more time left to serve on his
sentence than did Mr. Pankratz. However, given the nature of the challenge presented, it would
seem futile to require petitioner to pursue further administrative review of his claim.